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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/266,674      | 03/11/1999  | DEREK JONATHAN HARPER | P-8609              | 6125             |

7590

10/28/2003

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EXAMINER

SIRMONS, KEVIN C

ART UNIT PAPER NUMBER

3763

DATE MAILED: 10/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/266,674

Applicant(s)

HARPER ET AL.

Examiner

Kevin C. Sirmons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-58; 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15, 19-22 and 24-33 is/are rejected.
- 7) ☒ Claim(s) 5, 17, 18, 23, 35 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 24.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: See a fluid reservoir.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: The fluid reservoir lacks a reference numeral. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-4, 6-15, 19-22, 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger et al in view of Kashmer et al U.S. Pat. No. 4,465,485.

Krueger discloses a drip chamber system for draining cerebral spinal fluid from a brain comprising: a fluid reservoir (55);

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an outlet manifold (73) in fluid communication with the fluid reservoir, the outlet manifold having an outlet (distal end of 73); an inlet manifold in fluid communication with the fluid reservoir (59), the inlet manifold having an inlet and an outer surface (fig. 25), the inlet manifold having a vent (66), the inlet manifold having an inside surface (fig. 25); drainage bag (81) and stopcock (76). Krueger does not clearly disclose a filter made of a porous material wherein the pore size of the filter ranges from greater than .45  $\mu\text{m}$  to about 5.0  $\mu\text{m}$ . Kashmer discloses a filter made of a porous material wherein the pore size of the filter ranges from greater than 45  $\mu\text{m}$  to about 5  $\mu\text{m}$ . Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the filter of Krueger with the filter as disclosed by Kashmer to entrap and prevent microorganisms which may be found in a hospital environment from contaminating the drip/drainage bag/chamber (col. 6, lines 41-50). Further, it would have been an obvious matter of design choice to a filter with a specific pore size of the filter greater than .45  $\mu\text{m}$  to about 5.0  $\mu\text{m}$ , since applicant has not disclosed that the aforementioned specification solves any stated problem in the art, provides an advantage or is for any particular purpose and it appears that the invention would perform equally well with a filter with a pore size range from .22  $\mu\text{m}$  to 5.0  $\mu\text{m}$ . The aforementioned ranges are taken directly from applicant's specification. As to claims 3 and 4, (see Kashmer (40)); as to claims 6-8, the inner portion of (66) is flush with the outer surface of the inlet manifold; as to claims 9-13, (fig. 7); and as to claims 14-15, 19-22 and 24-33, (see above rejections)

Claims 2, 16, 20, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger et al in view Kashmer et al further in view of Wollinsky et al U.S. Pat. No. 5,462,667.

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Krueger discloses a drip chamber substantially as claimed except for the pore size of the filter being about 3  $\mu\text{m}$ . Wollinsky discloses a filter with a pore size being from 0.04-0.45  $\mu\text{m}$ . Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the filter of Krueger with the filter as disclosed by Wollinsky for filtering unwanted bacteria and viruses.

*Allowable Subject Matter*

Claims 5, 17-18, 23, 35 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Note: old claims 23-58 have been re-number 1-36.

*Conclusion*

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.



Kevin C. Sirmons  
Patent Examiner  
10/27/03